IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

Crl.MC.No. 3302 of 2007()

(CC.NO.1070/07 OF THE COURT OF THE ASST. CHIEF JUDICIAL MAGISTRATE, ERNAKULAM.)

PETITIONER: ACCUSED

P.SAYED, S/O.VEERAN,
AGED 50 YEARS, PADINJATTE HOUSE,
MANNARKKAD COLLEGE P.O., KUMARAMPUTHUR,
PALAKKAD DISTRICT.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BYPUBLIC PROSECUTOR SRI. JIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No. 3302 Of 2007

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Dated this the 29th day of October, 2007

ORDER

The petitioner faces indictment in a prosecution for the offence punishable under Section 420 IPC. The petitioner had entered appearance and was enlarged on bail. The case was posted to 1.8.07. for examination of CW1. CW1 was present, but the petitioner was not present. According to the learned counsel for the petitioner, the petitioner resides far away from the Court. He had started from home, but he could not reach the Court in time. The learned counsel for the petitioner allegedly made a request to get the case passed over and the request was not allowed. Warrant of arrest was issued against the petitioner on 1.8.07. Thereafter, after several adjournments, the case now stands posted to 5.11.07. The petitioner has not entered appearance so far. It is submitted at the Bar that the petitioner had reached the Court, though belatedly, on 1.08.07. The fact was brought to the notice of the learned Magistrate, but no action was taken by the learned Magistrate who did not recall the non bailable warrant issued against the petitioner.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The absence of the petitioner earlier

was not wilful or deliberate. The petitioner is willing to surrender before the learned Magistrate and seek regular bail, but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He further apprehends that he, being the leader of the opposition parties and a member of the local Panchayat, the Police may, out of political vendetta, arrest and drag him to the Court. He therefore prays that appropriate directions under Section 482 Cr.P.C may be issued in favour of the petitioner.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior

notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

5. In the peculiar facts and circumstances of this case, I am satisfied that there can be a direction that the warrant of arrest pending against the petitioner shall not be executed till 5.11.07. On or before that date the petitioner can appear before the learned Magistrate and seek regular bail.

6. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE